Supreme Court, U.S.
FILED

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In the

Supreme Court of the United States

October Term, 1997

In re Deborah Sever,
Petitioner, pro se

Petition for an Extraordinary Writ of Mandamus and/or Prohibition to the Federal Court of Appeals for the District of Columbia

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS AND/OR PROHIBITION

Deborah Sever, *Petitioner, pro se*
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25 pp.

QUESTION PRESENTED FOR REVIEW

Whether the participation of a federal judge in finalizing a Maryland State court judgement that purported to "cure" an admittedly perjurious affidavit constitutes a *clear usurpation of the power* to *pardon,* exclusively reserved to the Governor of the State of Maryland, in violation of the *dual sovereignty principle and the Tenth Amendment of the Constitution of United States*.

PARTIES TO THE PROCEEDING

Petitioner, *pro se,* is Deborah Sever whose action for declaratory relief in the District Court for the District of Columbia seeks review of the official conduct of the Honorable Frank A. Kaufman of the District Court for the Southern District of Maryland, as being in violation of the ***dual sovereignty principle*** and ***the Tenth Amendment*** Constitution of the United States, after acquiring jurisdiction over the person of the Honorable Frank A. Kaufman in the District of Columbia.

Respondent is the Federal Court of Appeals for the District of Columbia, that failed in its duty to remand the case to the district court with the directions to declare the conduct of the Honorable Frank A. Kaufman in violation of the ***dual sovereignty principle of the Tenth Amendment*** and ***the United States Constitution***, and the ***purported*** judgement which he entered based upon a purported "cure" of an admittedly perjurious affidavit, as *void, ab initio,* pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure.

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In the

Supreme Court of the United States

October Term, 1997

In re Deborah Sever,
Petitioner, pro se

Petition for an Extraordinary Writ of Mandamus and/or Prohibition to the Federal Court of Appeals for the District of Columbia

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PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS AND/OR PROHIBITION

Deborah Sever, on behalf of herself, respectfully petitions this Court for an extraordinary writ of mandamus and/or prohibition to compel the District of Columbia Federal Court of Appeals to execute its constitutional and/or statutory duty; or in the alternative; to cease and desist in failing to execute its constitutional and/or statutory duty.

OPINIONS BELOW

The opinion of the Federal District Court for the District of Columbia, filed October 28, 1996, is reprinted in the appendix hereto ("App.") at 1a. The opinion of the Federal District Court for the District of Columbia, filed November 19, 1996, is reprinted in the appendix hereto at 2a. The opinion of the District of Columbia Federal Court of Appeals filed August 29, 1997, is reprinted in the appendix hereto at 3a. The order(s) of

the District of Columbia Federal Court of Appeals denying Rehearing or Rehearing en Banc, filed August 11, 1997, are reprinted in the appendix hereto at 3a and 4a, respectively. The mandate of the District of Columbia Federal Court of Appeals filed August 29, 1997 is reprinted in the appendix hereto at 5a.

JURISDICTION

The mandate of the District of Columbia Federal Court of Appeals was entered on August 29, 1997. The Court of Appeals denied timely petition for rehearing and suggestion for rehearing en banc on August 11, 1997. The above-named petitioner, Deborah Sever, herein applies, pursuant to (Section 1651, Title 28, United States Code, and Rule 21(a) of the United States Supreme Court Rules of Appellate Procedure), for a writ of mandamus, or in the alternative, for a writ of prohibition, directed to the Federal Court of Appeals for the District of Columbia ("respondent").

CONSTITUTIONAL PROVISION INVOLVED

The *dual sovereignty principle* and the Tenth Amendment of the United States Constitution, *Prinz v. United State, Mack v. United States,* 117 S.Ct. 2365, 2367-2385.

STATEMENT OF THE CASE

This case initially evolved from a civil case, Case No. C-92-07316 before the Circuit Court of Anne Arundel County, initially between Insurance Company of North America ("INA"), (plaintiff/cross-defendant in that case), and petitioner Deborah Sever ("petitioner" and defendant/cross-plaintiff in that case). During the course of the case, petitioner proved (and it was admitted to) that Kevin H. Brown ("Brown"), an attorney and third party defendant in the case, filed a perjurious affidavit that had been forged and contained false and untrue facts, in support of his pleadings. Brown *expressly admitted*

affidavit that had been forged and contained false and untrue facts, in support of his pleadings. Brown *expressly admitted* that the perjurious affidavit had been forged. At the only hearing in the case, Brown proffered a so-called "curative" affidavit to Anne Arundel Circuit Judge Warren B. Duckett, III ("Judge Duckett"), contending that it would "cure" the perjurious affidavit. The "curative" affidavit, excluded the false and untrue facts of the perjurious affidavit. Thus, Brown *at least impliedly admitted* to the falsity of these facts as they occurred in the perjurious affidavit. Based upon the "curative" affidavit, Judge Duckett ruled that the "fraud" of the perjurious affidavit had been sufficiently "rectified," and entered an interlocutory order dismissing all of petitioner's cross/third party claims. Petitioner thereafter entered into a reciprocal stipulation agreement wherein petitioner and INA mutually agreed to voluntarily dismiss their respective claims *without prejudice*. Petitioner also voluntarily dismissed all of her third party claims *without prejudice*. Petitioner thereafter acquired diversity jurisdiction and timely refiled her claims against INA et al, as Case No. K-95-2200, before the Honorable Frank A. Kaufman ("Judge Kaufman") of the Federal District Court for the Southern District of Maryland in Baltimore, Maryland. Judge Kaufman first dismissed the case based upon the defense of *res judicata* and claim preclusion, offered up by INA, et al, but had to later vacate his judgement when petitioner demonstrated that INA, et al could not produce a copy of a final judgement in support of their defense. However, he directed INA, et al, *to return to the Circuit Court of Anne Arundel County, and procure a final judgement.* He further indicated that *he would stay the federal proceeding, pending an appeal in the state court proceeding.* Whereupon, INA, et al, did in-fact return to the Circuit Court of Anne Arundel County; and was in-fact issued a final judgement, with which they returned to the federal district court. Judge Kaufman then entered final judgement on their defense of *re judicata* and claim preclusion. Whereupon petitioner filed an action before the district court for the District of Columbia seeking a

judgement declaring Judge Kaufman's role in finalizing a void *ab initio* judgement, as constitutionally impermissible.

REASONS FOR GRANTING THE WRIT

I. Respondent erred in holding that petitioner sought review of another circuit's decision, rather than merely seeking review of the unconstitutional conduct of a federal officer over which it had jurisdiction over the person and the subject matter.

A. Clear absence of all jurisdiction

The declaratory relief which petitioner sought is authorized by *at least: Pullian v. Allen*, 466 U.S. 522, at 541-42; *Larson v. Domestic & Foreign Corp.*, (1948) 337 U.S. 682, 702-03; and, *Clark v. Library of Congress*, (DC 1984) 750 F2d 89, 104. Otherwise, the direct effect of purporting to "cure" a perjurious affidavit is to *pardon* its would-be perjurer and absolve him of the guilt of his perjury for all time. This crime of perjury occurred in the state courts of Maryland. Pursuant to the Constitution of Maryland, the *power of pardon* for a crime committed in Maryland is exclusively vested in the Governor of the State of Maryland. The power is subject to strict procedural safeguards prescribed by Maryland statute and the Constitution of Maryland. Through his role in finalizing an order purporting to "cure" a false affidavit, Judge Kaufman *clearly usurped the power of the governor of Maryland* by effectively executing an *act of pardon*. Moreover, this conduct was effected by Judge Kaufman *absent* the procedures *mandated* by Maryland statute and Constitution. Since the pardon power is exclusive to the Governor of Maryland, Judge Kaufman's action in purporting to exercise it was taken in the *complete absence of all jurisdiction*. Thus, it would seem to follow that *such action was void ab initio*. It would further seem to follow that any judgement entered pursuant to such exercise of clearly usurped power would also be *void ab initio*.

Stated otherwise–such purported *judgement would never have come into existence.* Since the judgement never came into existence, it never became the *"decision of the district court in the District of Maryland"* that respondent's mandate purports it to be. However, Judge Kaufman's *conduct* in purporting to enter such a *void ab initio* judgement did in-fact come into existence. It is precisely this conduct: that proximately harmed petitioner; of which petitioner complained to the federal district court for the District of Columbia; and, for which petitioner sought relief. Thus, it would seem that the only criteria required for the district court to exercise judicial power other petitioner's cause is that it have jurisdiction over the subject matter and jurisdiction over the person.

B. Jurisdiction over the subject matter

Petitioner initially captioned her complaint as a declaratory action and claims pursuant to *Bivens v. Six Unknown Named Agents,* (1971) 403 US 388 and 42 USC §§ 1985(2), 1986; and, later purported to expand it to include 42 USC §§ 1983. The district court clearly has jurisdiction to hear cases or controversies involving *Bivens v. Six Unknown Named Agents,* (1971) 403 US 388 and 42 USC § 1983;1985(2), and 1986. Thus, it is beyond dispute that the district court had jurisdiction over the subject matter of petitioner's cause.

II. Judge Kaufman made a general appearance before the district court for the District of Columbia

A. Jurisdiction over the person

A forum establishes jurisdiction over a non-resident person in one of at least Two (2) ways. It must be established that a person either has sufficient *minimum contacts* with the forum sufficient to avail himself of the laws of that forum; or, that person has *voluntarily submitted* himself to the jurisdiction of the forum. A person voluntarily submits himself to the

jurisdiction of a forum by making a *general appearance.* A general appearance may be implied at law, as where the party, either personally or through an agent, requests for an extension of time in which to respond to pleadings, *H F Livermore Corp v. Aktiengellschaft Gebruder L* (DC App 1970) 432 F2d 689, 691-692. Here, attorney Dana Corrigan of the Office of the United States Attorney, requested an extension *on behalf of Judge Kaufman, in which to respond to petitioner's pleadings.* Petitioner stipulated to the request. Thus, the district court acquired jurisdiction over Judge Kaufman's person.

III. Judge Kaufman's role in finalizing a constitutionally void judgment was in violation of the *dual sovereignty principle* and *the Tenth Amendment of the United States Constitution*

Since it involved an exercise of the pardon power exclusive to the Governor of the State of Maryland, Judge Kaufman's conduct *in purporting to render a "decision"* was in violation of the *dual sovereignty principle* and *the Tenth Amendment of the United States Constitution, Federal Energy Regulatory Commission, et al v. Mississippi, et al,* 456 U.S. 742, *753; *Faulkner v. Jones,* (4th Circ. 1995) 51 F.3d 440, *455-456. Thus, Judge Kaufman's "judicial decision" as well as his conduct in purporting to render it, were *void ab initio* and a *nullity from their purported inception.* Stated otherwise, since the decision was void ab initio and a nullity, *it never came into existence or being, as a "decision" within the meaning of 28 USC § 1291.* Petitioner respectfully submits that such conduct strikes at the very heart of *federalism.* It is respectfully submitted that the respondent's reliance in its mandate upon 28 USC § 1291, which bars only *real and existing decisions,* is misplaced[1].

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[1] It is noted that the Court cited no case which holds that § 1291 applies to *void judgements.* Nor has appellant's research revealed any such authority.

IV. Mandamus is proper to remedy a *clear usurpation of power.*

As demonstrated above, Judge Kaufman's conduct was effected in the clear absence of all jurisdiction and thus constituted a *clear usurpation of power.* A writ of mandamus will lie to rectify the instant *usurpation of power, De Beers Mines v. United States,* (1944) 325 US 212, 217; *Bankers Life & Casualty Co v. Holland,* (1953) 346 US 379, 382-383; *Kerr v. United States District Court,* (1975) 426 US 394, 402; *Will v. United States* (1967) 389 US 90, 95; *Schlagenhauf v. Holder,* (1964) 379 US 104, 110; *Gulfstream Aerospace Corp v. Mayacamas,* (1988) 99 L Ed 2d 296; *LaBuy v. Howes Leather Co,* (1956) 352 US 249, 257; 57 L Ed 2d 1203, § 9.[b], at page 1213; *Energy Conversion Devices, Inc v. Manbeck,* (DDC 1990) 741 F Supp 965, 967.

V. Issuance of the Writ will aid this Court in exercise of its jurisdiction.

It is well settled that:

> "[T]raditional use of mandamus in aid of appellate jurisdiction, both at common law and in federal courts, has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or *to compel it to exercise its authority when it is its duty to do so.* 28 U.S.C.A. 1651(a);" Roche v. Evaporated Milk Ass'n, 1943, 319 U.S. 21, 26, 63 S.Ct. 938, 941, 87 L.Ed. 1185.

As demonstrated above, through his role in purporting to finalize an order based upon the purported "cure" of a perjurious affidavit, Judge Kaufman effectively participated in

pardoning the perjurer of the perjurious affidavit. By doing so, Judge Kaufman thereby usurped the power of the Governor of the State of Maryland[2] and thus acted in the *complete absence of all jurisdiction.* Therefore, the judgement entered on the order, as well as all subsequent orders or judgements based thereupon, were likewise *void ab initio.* Petitioner's action against Judge Kaufman in the District Court for the District of Columbia ("the district court") was based upon actions pursuant to *Bivens v. Six Unknown Named Agents,* (1971) 403 US 388, 42 USC § 1985, and 42 USC § 1986, primarily seeking declaratory relief; actions over which the district court undisputably has subject matter jurisdiction. Further, as demonstrated above, Judge Kaufman made a general appearance before the district court pursuant to *H. F. Livermore Corp v. Aktiengellschaft Gebruder L* (DC App 1970) 432 F2d 689, 691-692. Finally, since Judge Kaufman's purported judgement in support of a "cure" of a perjurious affidavit was *void ab initio, it was a nullity which never came into legal being.* Thus, petitioner's action was in complaint of the conduct of a federal officer in the course of his official duty *and not an attempt by petitioner to seek review of a judgement of a circuit in the appellate court of a sister circuit, otherwise barred by 28 U.S.C. § 1291.* Here, the appellate court's reliance upon § 1291 to avoid proscribing action taken by a federal officer in the complete absence of all jurisdiction, is

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[2] Petitioner also argued that such conduct was also impermissible because: (a.) it purported to abandon the completed crime of perjury (as defined under Maryland criminal statutory law), and thus constituted a *legal impossibility;* (b.) it operated to *suborn* the perjury of the perjurious affidavit, in violation of Maryland statutory law; and, (c.) it involves official mal/mis/non-feasance, since a Maryland (state) judge *must* enforce criminal statutes, under the Maryland common law.

inapt. Thus, mandamus is the proper traditional remedy to aid this Court in the exercise of its supervisory appellate jurisdiction in compelling the Court of Appeals for the District of Columbia to perform its duty, within the meaning of *Roche*.

VI. Adequate relief is unavailable in any other form or from any other court.

Here, there is no other court that can grant petitioner relief from the final decision of the Court of Appeals for the District of Columbia, other than this Honorable Court. Nor is there any remedy through which such relief may be effected, other than *mandamus* and/or *prohibition*.

CONCLUSION

Wherefor, petitioner respectfully prays for any and/or all of the foregoing reasons, that a writ of mandamus, or in the alternative, a writ of prohibition, should be issued by this Honorable Court directing respondent, the Federal Court of Appeals for the District of Columbia, to vacate its Judgement and Mandate affirming the district court, and all other decisions entered on the instant matter; and, remand the cause to the district court, directing it to enter an order:

1. Vacating its orders of October 28, 1996 and November 19, 1996, affirming the district court's dismissal of petitioner's complaint;

2. Granting leave to petitioner to amend her complaint to add a federal question claim pursuant to 42 USC § 1983, to deny, and conspiracy to deny petitioner *due process* under color of state law, against defendant, the Honorable Frank A. Kaufman;

3. Granting all relief sought by petitioner's amended complaint; and,

4. Such other and further relief as this Honorable Court may deem proper.

Dated December ____, 1997.

Respectfully submitted

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APPENDIX A

[Judgement of District Court entered October 28, 1996]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 96-2255

DEBORAH KUMER SEVER, Plaintiff,

v.

THE HONORABLE FRANK A. KAUFMAN, Defendant.

(Hon. Harold H. Greene)

(Entered October 28, 1996)

Order

The Plaintiff, proceeding pro se, has filed an action pursuant to Bivens v. Six Unknown Named Agents of the Bureau of Narcotics, 403 US 388 (1971) against United States District Judge Frank A. Kaufman regarding his conduct during a federal civil action filed by plaintiff. Although her complaint is difficult to follow, apparently she claims that Judge Kaufman improperly entered summary judgement for defendants on res judicata grounds with respect to another state civil action filed by the plaintiff because it was not yet final. She alleges specifically that Judge Kaufman violated her rights by directing defendants to procure a final judgement in the preclusive state action and entering summary judgement on her federal claims before this was completed. The plaintiff cites a litany of constitutional and statutory violations Judge Kaufman allegedly committed by this action, including violations of the Full Faith and Credit Clause, the Contracts

Clause, and Maryland law. She also claims that Judge Kaufman was involved in a conspiracy with the defendants in her state civil action The plaintiff's claims must be dismissed for failure to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(6). It is hornbook law that judges enjoy absolute immunity from suits for money damages for all actions taken in their judicial capacity. Mireles v. Waco, 502 U.S. 9 (1992); Cleavinger v. Saxner, 474 U.S. 193 (1985). This immunity may not be overcome by allegations of bad faith or malice. Mireles, 502 U.S. at 11. The actions of Judge Kaufman -- the granting of a motion for summary judgment and direction to a party to ensure a final judgement is entered -- obviously are well within his judicial capacity. As a result, the claims against Judge Kaufman are dismissed because he is insulated from suit by absolute immunity.

In consideration of the above, it is this 20th day of Oct., 1996 ORDERED that the plaintiff's complaint be and it is hereby DISMISSED.

s/ _____

Harold H. Greene
United States District Judge

APPENDIX B

[Judgement of District Court entered November 19, 1996]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 96-2255

DEBORAH KUMER SEVER, Plaintiff,

v.

THE HONORABLE FRANK A. KAUFMAN, Defendant.

(Hon. Harold H. Greene)

(Entered November 19, 1996)

Order

Before the Court are several motions filed by the plaintiff under Fed. R. Civ. P. 60(b)(4), a motion for reconsideration, and a motion to vacate the Court's October 20, 1996 Order dismissing her complaint. The plaintiff, pro se, filed a complaint alleging that Judge Kaufman violated her constitutional rights through his actions as a United States District Judge. Her complaint was dismissed sua sponte since Judge Kaufman is protected by absolute judicial immunity. The plaintiff has offered this Court no coherent reason why this ruling should be vacated or reconsidered. On the contrary, her pursuit of this frivolous claim only lends more force to the argument that it should be dismissed. In consideration of the above, it is this 19th day of November, 1996

ORDERED that plaintiff's motion for reconsideration, motion to

s/ _____

Harold H. Greene
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No 96-5359

Spring Term, 1996
96cv022255

DEBORAH KUMER SEVER, Appellant,

v.

FRANK A. KAUFMAN, Honorable Appellee

BEFORE:
Edwards, Chief Judge, Williams and Ginsberg, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed July 14, 1997, it is ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: s/ Robert A. Bonner
Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No 96-5359
Spring Term, 1996
96cv022255

DEBORAH KUMER SEVER, Appellant,
v.
FRANK A. KAUFMAN, Honorable Appellee

BEFORE:
Edwards, Chief Judge, Wald, Silberman, Williams, Ginsberg, Sentelle, Henderson, Randolf, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellant's suggestion for Rehearing En Banc, and the absence of a request for any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: s/ Robert A. Bonner
Deputy Clerk

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No 96-5359
Spring Term, 1996
96cv022255

DEBORAH KUMER SEVER, Appellant,

v.

FRANK A. KAUFMAN, Honorable Appellee

APPEAL FROM THE UNITED STATES DISTRICT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Edwards, Chief Judge;
Williams and Ginsburg, Circuit Judges

JUDGEMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36(b). It is

ORDERED and ADJUDGED that the district court's orders filed October 28, and November 27, 1996, be affirmed substantially for the reasons stated by the district court. Furthermore, neither this court nor the district court has the authority to review the decision of the district court in the District of Maryland or to order that court to perform any function. See 28 U.S.C. § 1291 (review of district court

decision is sought in court of appeals in which district court is located). Appellant's proper forum to appeal the decision of the District of Maryland is before the Fourth Circuit, and that appeal is currently pending.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

s/_____